

STATEMENT OF EMERGENCY
201 KAR 22:070E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. During the 2017 Legislative Session, the General Assembly enacted House Bill 227 which required, inter alia, that applicants seeking to obtain a credential to engage in the practice of physical therapy in Kentucky submit to a nationwide criminal background investigation provided by the Kentucky State Police and Federal Bureau of Investigation as a condition for participating in the Physical Therapy Compact. Following the passage of this legislation the Kentucky Board of Physical Therapy amended 201 KAR 22:020, 201 KAR 22:040, and 201 KAR 22:070 to make the criminal background investigation a requirement for initial licensure or certification, effective May 1, 2018. As of the date of the filing of this emergency administrative regulation, the Board has been unable to obtain an Originating Agency Identification number from the FBI which would allow its applicants to obtain the necessary criminal background investigation. This is being filed as an emergency administrative regulation to ensure that new applicants, including new graduates of physical therapy and physical therapist assistant programs, are not denied the ability to obtain a license or certificate due to circumstances beyond their control. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor
TALIA BARTON, Board Chair
SCOTT D. MAJORS, Executive Director

GENERAL GOVERNMENT
Board of Physical Therapy
(Emergency Amendment)

201 KAR 22:070E. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310

EFFECTIVE: March 14, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

- (1) Complies with the requirements of KRS 327.060(1)(b).
- (2) In accordance with KRS 327.060(1)(b), meets the following requirements:
 - (a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic de-

iciency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;
2. Continuing education in a course approved by the board; or
3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);
2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL iBT): Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89); or
3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation~~[May 1, 2018]~~, submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

TALIA BARTON, Board Chair

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: March 13, 2018

FILED WITH LRC: March 14, 2018 at 10 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any foreign-educated applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background

investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Foreign-educated applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation, effective six months after the Board obtains an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately \$40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, foreign-educated applicants will be granted a license to practice physical therapy in the Commonwealth of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Foreign-educated applicants for physical therapy credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060, 327.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school dis-

tricts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: